IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7255 OF 2004

Amarnath jamadar Pandey. Petitioner

(Org.Respondent)

Vs.

Murlidhar Suryabali Mishra Respondent

(Org.Applicant.)

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Shri J.P.Dubey for petitioner.

Shri Lallan Mishra for respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 7th SEPTEMBER, 2004.

P.C.

1. Heard the learned advocate for the petitioner.

Perused the records.

2. The petitioner challenges the order dated 22nd April, 2004 passed by the Competent Authority, Konkan Division, Mumbai, in Application No.28 of 1998, which was filed by the petitioner / original respondent for setting aside ex-parte order of eviction dated 3rd August, 1999. The Authority below, on account of failure on the part of the petitioner to disclose sufficient cause for absence of the petitioner at the time when the ex-parte order of eviction was passed as also on account of failure on the part of the

petitioner to contest the proceedings, has rejected the application. The findings arrived at in the impugned order are clearly borne out from the records. Merely because the petitioner had to attend his son's wedding in the month of May and the relations of the petitioner had to be taken to the hospital for treatment during the period from May to August, that will not justify the failure on the part of the petitioner to contest the proceedings. The learned advocate for the petitioner has produced for my perusal the hospital papers of E.S.I.S. hospital in relation to the treatment of his relatives including the document relating to the admission of the patients to the hospital and their discharge. In case of Sushiladevi Pandey, it show that she was admitted in the hospital on 11th June, 1999 and discharged on 30th June, 1999. Another card also shows that she was admitted on 21st May, 1999 and discharged on 25th May, 1999. It also shows that she was earlier admitted on 19th April, 1994 and discharged on 12th May, 1999. In relation to Chandnani Pandey, it shows that she was admitted in the hospital on 15th October, 1999 and discharged on 20th October, 1999. Apparently, none of these case papers were related to the month of August, 1999 or even of July, 1999. Admittedly, the petitioner was served with the summons in the eviction proceedings and he had also put his appearance through his advocate on 15th April, 1998. There were several allegations by the respondent against the petitioner

in the nature of acceptance of a sum of Rs.65,000/- and further in the nature of assurance by the petitioner that the premises would be vacated within two months from the date of receipt of the said amount in the year 1997. Yet, the petitioner did not bother to reply the said application for eviction. In the absence of sufficient cause being disclosed for failure on the part of the petitioner to contest the proceedings as well as failure on his part to appear in the Court on 3rd August, 1999, I do not find any illegality in the impugned order nor there is any improper exercise of jurisdiction by the Authorities below in rejecting the application for setting aside the impugned order.

3. Being so, there is no case for interference in the impugned order. However, on oral request by the learned advocate for the petitioner, the execution of the eviction order shall not be given effect for a period of 12 weeks from today.